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Remarks:

Reconsideration of the application, as amended herein, is respectfully requested.

Claims 70 - 115 are presently pending in the application.

Claims 70, 84, 91 - 94, 96 - 99, 102 and 115 have been amended.

Claim 85 has been canceled herein, while claims 1 - 69 were previously canceled.

In item 3 of the above-identified Office Action, claims 70 - 77, 81 - 82, 84 - 86, 91 - 100, 102 - 107, 111 - 112 and 114 - 115 were rejected under 35 U.S.C. § 103(a) as allegedly being obvious over U. S. Patent No. 5,390,238 to Kirk et al ("KIRK") in view of full text abstract of newswire article on "Lunar Radiation Corp." ("LUNAR").

In item 4 of the Office Action, claims 78 - 80, 83, 87 - 90, 108 - 110 and 113 were rejected under 35 U.S.C. § 103(a) as being obvious over KIRK and LUNAR in view of U. S. Patent No. 5,774,879 to Custy ("CUSTY"). In item 5 of the Office Action, claim 101 was rejected under 35 U.S.C. § 103(a) as being obvious over KIRK and LUNAR in view of U. S. Patent No. 5,642,731 to Kehr ("KEHR").

Applicant respectfully traverses the above rejections.

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- I. Applicant's claims 70, 84, 91, 96, 97, 99, 102 and 115 aggregate the data from multiple medical records provide useful information derived from those records.

The instant application makes clear that the present invention can be used to collect and use data from multiple records.

For example, paragraphs [0107] - [0108] of the instant application state:

Of scientific note is that the system is privy to and operates at the confluence of three powerful emergent data streams: encyclopedic data on therapeutic agents intended to moderate particular conditions or patient problems; data on individual prescriber activity using skill and judgment to diagnose conditions or problems and make prescribing decisions selecting and applying therapeutic agents to diminish diagnosed conditions; and patient history data recording not only prescribing decisions but also the results of those decisions (see the description of FIG. 12, below). Thus, the system captures not only prescribing activity but also the prescriber's intent, the problem or condition targeted by the prescriber in specifying a particular drug, and can track the success of that intent. The linkage of treatment with condition treated captures the reason why the doctor took the prescribing action that was taken. This intent may, and can legally, be different from approved FDA therapeutic indications for a drug.

Of commercial note is that the foregoing data may be aggregated for multiple users, for example by the host computing facility, for market research purposes. Also, an individual user's prescribing patterns may be reviewed by the user or by others. For example, drug benefits companies, can review the user's prescribing patterns for formulary compliance and respond by encouraging better compliance, where appropriate. Release of such data to third parties can be controlled to safeguard the privacy of the prescriber, or other health care provider, by prescriber-determined data access protocols specifying who, or what organization, department or group, may access what data, when they may access it and what they can do with it. For example, one physician may permit

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academic use for research studies and prohibit commercial use while another may permit either.
[emphasis added by Applicant]

The benefits of providing aggregated data to third parties is additionally set forth in the instant application, for example, in paragraph [0176], which states:

Pharmaceutical and managed care companies can gain marketing benefits from use of the system to introduce new drugs or new uses of old drugs to physicians, in a relevant manner, at a moment of peak interest.
[emphasis added by Applicant]

And, paragraphs [0183] and [0184], which states, in part:

The historical drug-prescribed and condition-treated records obtainable by using the invention can provide a basis for condition-based treatment guidelines developed by drug formularies. This novel data provides a new vehicle for outcome research for managed care, leading to new approaches to cost-effective prescription treatments.

Compilation of an extensive or national database of (patient-anonymous) records providing a statistical historical listing of drugs prescribed versus associated conditions for which they were prescribed would be in the public interest and of considerable value, so long as patient-confidentiality were maintained. [emphasis added by Applicant]

As such, Applicant's specification clearly supports the use of prescription information from multiple records to derive information on drugs-prescribed correlated with conditions-treated.

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Additionally, as stated in paragraph [0108] of the instant application, above, the instant application supports the review of a plurality of records to determine prescribing practices of an individual prescriber. This is additionally supported elsewhere in the instant application, for example, in paragraph [0165] of the instant application, which stated, in part:

Review of a physician's prescribing record, detailing the various drugs selected to treat the different conditions exhibited by the patients encountered in the physician's daily practice, can reveal valuable information about the physician's prescribing practices and the degree to which they follow formulary guidelines. [emphasis added by Applicant]

As such, the instant application supports the aggregation of data from multiple records to determine such things as: the drugs prescribed correlated with the medical conditions for which the drugs are prescribed; and the prescribing practices of an individual prescriber.

The use of such aggregated data is claimed in certain of Applicant's claims.

- A. Applicant's claims 70, 96 and 102 require, among other limitations, access to information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, derived from at least two patient records.

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For example, Applicant's claim 70 has been amended to recite,
among other limitations:

at least one user computer, said user computer having
a graphical user interface for displaying and
providing access to:

(1) a plurality of patient records, each patient
record including information about a patient's
prescription history; and

(2) information about pharmaceuticals correlated
with medical conditions for which the
pharmaceuticals are suitable for treating, said
information derived from at least two of said
plurality of patient records. [emphasis added by
Applicant]

Similarly, Applicant's amended claim 96 recites, among other
limitations:

b. a computer program stored on said memory medium,
said computer program containing instructions for
capturing prescription information and providing
access to:

(1) a plurality of patient records, each patient
record including information about a patient's
prescription history; and

(2) information about pharmaceuticals correlated
with medical conditions for which the
pharmaceuticals are suitable for treating, said
information derived from at least two of said
plurality of patient records. [emphasis added by
Applicant]

And Applicant's amended claim 102 recites, among other
limitations:

at least one user computer, said user computer having
a graphical user interface permitting capture of

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prescription information and providing access to all of:

(1) information about a plurality of prescription histories;

(2) information about pharmaceuticals correlated with the medical conditions for which the pharmaceuticals are suitable for treating, said information about pharmaceuticals being derived from at least two of said plurality of prescription histories; and

(3) information about the properties of pharmaceuticals;

The KIRK and LUNAR references, taken alone or in combination, fails to teach or suggest among other limitations, information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are suitable for treating, said information derived from at least two of said plurality of patient records, as required by Applicant's claims 70, 96 and 102. Rather, KIRK does not teach or suggest information about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are used for treating. LUNAR does not disclose deriving information from at least two patient records about pharmaceuticals correlated with medical conditions for which the pharmaceuticals are used for treating.

As such, Applicant's claims 70, 96 and 102 are believed to be patentable over KIRK and LUNAR, taken alone or in combination.

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- B. Applicant's claim 84 requires, among other limitations, sorting the received prescription information from at least two patient records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed.

Applicant's amended claim 84 recites, among other limitations:

sorting the received prescription information from at least two patient records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed;
[emphasis added by Applicant]

The KIRK and LUNAR references, taken alone or in combination, fails to teach or suggest among other limitations, sorting the received prescription information from at least two patient records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed, as required by Applicant's claim 84.

- C. Applicant's claims 91 and 115 requires, among other limitations, a sorting device for sorting the information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber.

Applicant's amended claims 91 and 115 recite, among other limitations:

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a sorting device for sorting the information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber; [emphasis added by Applicant]

The KIRK and LUNAR references, taken alone or in combination, fails to teach or suggest among other limitations, sorting the information from at least two medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by the individual prescriber and at least one medical condition for which the therapeutic agent was prescribed, as required by Applicant's claims 91 and 115.

- D. Applicant's claim 97 requires, among other limitations, sorting the received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed.

Applicant's amended claim 97 recites, among other limitations:

sorting the received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed. [emphasis added by Applicant]

The KIRK and LUNAR references, taken alone or in combination, fails to teach or suggest among other limitations, sorting the

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received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed, as required by Applicant's claim 97.

E. Applicant's claim 99 requires, among other limitations, sorting the received prescription information from at least two records to create a list of pharmaceuticals correlated with the medical conditions for which the pharmaceuticals were prescribed.

Applicant's amended claim 99 recites, among other limitations:

c. said computer program containing instructions for sorting the information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was prescribed by said at least one individual prescriber, and for outputting said report. [emphasis added by Applicant]

The KIRK and LUNAR references, taken alone or in combination, fails to teach or suggest among other limitations, instructions for sorting the information from at least two of said plurality of medical histories to produce a report correlating at least one individual prescriber with at least one therapeutic agent prescribed by said at least one individual prescriber and with said at least one medical condition for which said at least one therapeutic agent was

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prescribed by said at least one individual prescriber, as required by Applicant's claim 99.

II. The cited art does not teach or suggest "drug formulary information" as claimed by Applicant's in claims 100 and 101.

Applicant's claims 100 and 101 recite, among other limitations:

b) drug formulary information identifying at least one of multiple drugs as a patient's drug benefit provider's drug formulary preferences to ensure that the electronic prescription is filled with a benefit plan recommended drug;

Neither KIRK, nor LUNAR teach or suggest the use of "drug formulary information" as claimed by Applicant in claims 100 and 101. KIRK neither teaches nor suggests drug formulary preferences. Rather, pages 4 - 5 of the Office Action states, in part:

Furthermore, as per claim 100 "Lunar Radiation Corp." teaches a means of providing drug formulary preferences (of a patient's drug provider) to ensure that the electronic prescription is filled with a benefit plan recommend drug ("Lunar Radiation Corp.": Main Paragraph, Sentences 2 and 4). The motivation for making this modification to the combined system of Kirk in view of "Lunar Radiation Corp." and Kehr was the same as that was set forth in the rejection of claim 70 above. (Note "Lunar Radiation Corp." teaches that database results are retrieved and displayed and this information includes patient information as well as therapy (drug) information. The examiner takes the position that drug formulary preferences is within the scope of therapy information. Furthermore, "Lunar Radiation Corp." states that the above stated

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information is provided to "ensure that the electronic prescription is filled with a benefit plan recommended drug" and the examiner takes the position that since the motivation of using the system of "Lunar Radiation Corp." is to provide users with more meaningful and efficient record management the above stated reason for ensuring that benefit plan recommended drugs are prescribed is to ensure that the prescription drug system functions more efficiently. [emphasis added by Applicant]

Applicant respectfully disagrees that the LUNAR reference discloses Applicant's claimed "drug formulary information". Nowhere does LUNAR teach or suggest "drug formulary information". The Office Action states "Lunar Radiation Corp." states that the above stated information is provided to "ensure that the electronic prescription is filled with a benefit plan recommended drug". However, nothing in LUNAR suggests using a benefit plan recommended drug. Rather, the citable prior art portion of LUNAR, as provided to Applicant with the Office Action, states in its entirety:

Lunar Radiation Corp. has introduced patient database software as a standard feature of its IBM-based DP3 and SP2 bone densitometers.

The patient data base is dBASE III compatible and allows retrieval of patient information to meet your needs. Scan results can be recalled chronologically to aid monitoring of therapy and to display disease process and patient progress. The database can also store information on a patient's medical history, fracture history, referring physician, treatment programs and changes, and insurance coverage. Data entry fields allow the input of additional patient information for more efficient and meaningful record management. [emphasis added by Applicant]

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The mere disclosure of a patient's medical history, fracture history, referring physician, treatment programs and changes and insurance coverage, does not teach or suggest Applicant's claimed "drug formulary information". Therapy information may include or not include drugs that were prescribed that were part of the patient's approved drug formulary. Neither is disclosed or elaborated upon by LUNAR. As such, the disclosure of "treatment programs" in LUNAR would not teach or suggest Applicant's claimed "drug formulary information". Further, the insurance coverage of a patient relates to by whom the patient is insured, and would not suggest to a person of skill in the art "drug formulary information", as required by Applicant's claims 100 and 101.

From the statements made in the Office Action, it is possible that a different LUNAR reference was provided to Applicant with the Office Action than is being reviewed by the Examiner. If the instant rejection is maintained, Applicant respectfully requests clarification of where in the reference the Examiner that "Lunar Radiation Corp." states that the above stated information is provided to "ensure that the electronic prescription is filled with a benefit plan recommended drug", as stated on page 5 of the Office Action.

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In the absence of LUNAR teaching or suggesting "drug formulary information" as claimed by Applicant, claims 100 and 101 are believed patentable over the combination of KIRK and LUNAR.

III. The cited art does not teach or suggest a chronologically current version of the patient's prescription history "not being permanently stored" as claimed by Applicant's in claim 98.

Applicant's claim 98 has been amended to recite, among other limitations:

b. a computer program stored on said memory medium, said computer program containing instructions for interrogating databases expected to contain information about a patient based on a patient's relationship with the provider of that database and for assembling patient information into a chronologically current version of said patient's prescription history, said chronologically current version of said patient's prescription history being displayed but not being permanently stored. [emphasis added by Applicant]

Applicant's claim 98 is supported by the specification of the instant application, for example, paragraphs [0074] - [0079] and also by paragraphs [0124] - [0126], which state:

The invention also provides novel data-retrieval network systems to retrieve relevant patient data elements from multiple remote heterogenous primary source databases. Preferably, every time a host computer facility receives a call from a user device for a patient history or patient record, relevant data elements, for that record, or a record component (e.g. the most recent six-month or twelve-month portion), are retrieved from remote source databases, dynamically assembled, or integrated, into a virtual patient record, as described above, and delivered to

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the user device as an integral system data set. Alternatively, record assembly, which does not require undue hardware resources, can be performed on board the user device.

The record is viewed and may be printed out by the user, with patient authorization, but does not need to be permanently stored.

The host computer facility responsible for dynamic assembly of the virtual record logs the time, date and calling user to provide an audit trail of access to the patient's record, but does not commit the record to permanent storage. After use, the virtual patient record disappears, although it can be reconstructed archivally. [emphasis added by Applicant]

As such, Applicant's invention of claim 98 creates a "virtual patient record" that is chronologically current and assembled each time it is requested, and which is not permanently stored, thus necessitating that the patient record is created anew each time it is requested.

This is neither taught, nor suggested by KIRK or LUNAR. Rather, KIRK stores the patient's records permanently on the servers 38, including the financial data (42 of Fig. 3 of KIRK). This is supported by KIRK, for example, in col. 3, lines 53, states:

Operators 46, through monitoring terminal 44 and a communications link (preferably digital), can access data from local central servers 38, including financial data 42.

See also, col. 6 of KIRK, lines 1 - 5, which state:

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As shown in Fig. 3, patient data and deviations from prescribed schedules or instructions are stored on local central servers 38, with all deviations reportable through telephone network 36 or through monitoring terminals 44.

Nothing in KIRK or LUNAR teaches or suggests assembling a chronologically current patient history that is not permanently stored.

As such, Applicant's claim 98 is believed to be patentable over KIRK and LUNAR, taken alone, or in combination.

IV. Conclusion.

In view of the forgoing, it can be seen that Applicant's claims are patentable over KIRK and LUNAR, taken alone, or in combination. Additionally, neither the KEHR reference, cited in the Office Action in combination with KIRK and LUNAR against claim 101, nor the CUSTY reference, cited against other dependent claims, cure the above deficiencies of the KIRK and LUNAR references.

It is accordingly believed that none of the references, whether taken alone or in any combination, teach or suggest the features of claims 70, 84, 91, 96 - 102 and 115. Claims 70, 84, 91, 96 - 102 and 115 are, therefore, believed to be patentable over the art. The dependent claims are believed to

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be patentable as well because they all are ultimately dependent on claims 70, 84, 91 or 102.

In view of the foregoing, reconsideration and allowance of claims 70 - 115 are solicited.

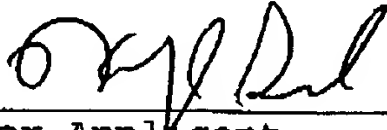
In the event the Examiner should still find any of the claims to be unpatentable, counsel would appreciate receiving a telephone call so that, if possible, patentable language can be worked out. In the alternative, the entry of the amendment is requested, as it is believed to place the application in better condition for appeal, without requiring extension of the field of search.

The instant Amendment is being filed simultaneously with a Request for Continued Examination and the fee associated therewith. If an extension of time for this paper is required, petition for extension is herewith made.

Please charge any fees that might be due with respect to Sections 1.16 and 1.17 to the Deposit Account of Robert M. Schwartz, P.A., No. 19-0734.

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Respectfully submitted,



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